

For information on construction contractors, see 86 Ill. Adm. Code 130.1940 and 130.2075.  
(This is a GIL.)

May 4, 2007

Dear Xxxxx:

This letter is in response to your letter dated August 25, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC is currently in the process of entering into a new line of business, the contracting of roadway maintenance projects. Examples of these contracts are reflective traffic control signage, roadway marking projects, and other similar roadway projects. The contracts are for ABC to provide materials and installation to, in general, governmental entities. All contracts are written as lump sum contracts for installation and materials.

The ABC tax department is most interested in the taxability of materials used by ABC in performance of these contracts. Materials may be purchased from outside vendors or withdrawn from ABC inventory. Thus, both sales and use tax liability may exist.

We have researched laws in your states, however an opinion from your division would be helpful as the ABC tax department is very intent on correctly taxing these materials used in the performance of the ABC contracts described above.

Following is a list of questions pertaining to ABC contracts as described above:

1. Are materials used in the performance of Federal contracts taxable to ABC?
2. Are materials used in the performance of State contracts taxable to ABC?
3. Are materials used in the performance of Local contracts taxable to ABC/ [sic]
4. If taxable, what is the use tax basis for materials withdrawn from ABC inventory?
5. Are there any other taxes on contractors in addition to sales/use tax?

ABC respectfully requests that your division returns to us answers (statutory and regulatory authority would be very much appreciated) to the above questions, along with any additional information that might be helpful when producing a sales/use tax decision on the ABC contracts described above.

I ask that the requested information be sent to my attention at the address shown on the top of this letterhead. If you have any questions or need further clarification with regard to what we are asking, please contact me.

## **DEPARTMENT'S RESPONSE**

Your letter has been forwarded to the Sales and Excise Tax division of the Legal Services Office. For general information regarding the sales taxes, we refer you to the sales tax rules at 86 Ill. Adm. Code Parts 130 Retailers' Occupation Tax, 140 Service Occupation Tax, and 150, Use Tax which can all be accessed on the Department's website described at the end of this letter.

A person who sells signs that have commercial value (i. e., value to persons other than the purchasers) incurs Retailers' Occupation Tax (sales tax) liability when making such sales, even if such signs are produced on special order for the purchaser. Examples of signs having such commercial value would be ones that spell out "real estate", "insurance," or "hamburgers," and which do not spell out the name of the purchaser nor the brand name of the purchaser's product and which are not otherwise similarly individualized. See 86 Ill. Adm. Code 130.2155 regarding vendors of signs. When a sign that has commercial value is sold and installed, the installation charge is also subject to Retailers' Occupation Tax unless there is a separate agreement for the installation charge. See 86 Ill. Adm. Code 130.450. The imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115.

If the sign vendor produces a sign on special order of the customer and the sign is so specialized that it would have no commercial value to anyone other than that particular customer who placed the order, the sign vendor would not incur Retailers' Occupation Tax liability. These transactions would be subject to liability under the Service Occupation Tax Act and the sign vendor would be considered a serviceman. See generally, 86 Ill. Adm. Code 140.101.

All of the above assumes that the signs remain tangible personal property after installation. If the signs were permanently affixed structurally as real estate, then there would be different tax consequences. Under Illinois law, a person who takes tangible personal property off the market and converts it into real estate is deemed a construction contractor and is the legal end-user of the tangible personal property. The construction contractor, as the user, incurs Illinois Use Tax and local Retailers' Occupation Tax reimbursement liabilities when the tangible personal property that will be converted into real estate is purchased from registered Illinois suppliers. If such items were purchased from suppliers that did not collect the tax, the person who converts the tangible personal property into real estate is required to self-assess and remit the Use Tax to the Department based upon the cost price of the property. For information on construction contractors, see 86 Ill. Adm. Code 130.1940 and 130.2075.

Materials to be incorporated into the realty: The Department's regulation at 86 Ill. Adm. Code 130.2075(d)(1) provides that sales of materials to construction contractors for incorporation into real

estate owned by governmental bodies are exempt from Retailers' Occupation Tax and Use Tax. To document the exemption from tax, the construction contractor must provide its suppliers with a certification stating that its purchases are for conversion into real estate under a contract with a governmental body and include the active exemption number issued by the Department to the governmental body. See subsection (d)(4) of Section 130.2075. Please note that the same regulation at subsection 130.2075(d)(3) provides that sales of tools, fuel, lumber for forms and other end use or consumption items to construction contractors who do not incorporate these items into real estate are taxable sales regardless of who the contractor's customer may be.

Materials not incorporated into the realty: If the contract requires that the contractor act as an agent of the government to purchase tangible personal property on its behalf, the contractor could use the government's exemption number to purchase the items tax-free.

However, if the contract with the governmental unit explicitly requires the contractor to sell those items to the governmental unit, the purchase of those items by the contractor can be structured as purchases for the purpose of resale to the governmental unit. If the contractor sells the items to the government, then the Department's regulation at 86 Ill. Adm. Code 130.2076 controls. The regulation states that sales of tangible personal property to the contractor in this situation are exempt from Retailers' Occupation Tax as sales for resale if the following conditions are met:

- 1) There is a contract between the purchaser and the governmental body that requires the purchaser to provide tangible personal property to the governmental body.
- 2) The contract is specific in documenting a sale of tangible personal property from the purchaser to the governmental body. The contract must specify that the tangible personal property is transferred to the governmental body. However, the contract does not have to be item specific. For example, a statement that title to all of the tangible personal property that is purchased shall pass to the governmental body is sufficient. The transfer may be immediate or subsequent to the completion of the contract.

The exemption applies to all tangible personal property that is used or consumed in the performance of a contract with a governmental body and to which title passes to the governmental body under the terms of the contract. For example, the exemption applies to consumable supplies, such as fuel, that a purchaser uses to fulfill the contract with the governmental body so long as the conditions set forth above are met.

See the Department's letter ST 06-0074 GIL.

If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote  
Associate Counsel